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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,823	09/19/2001	Todd Landon	LL11.12-0070	2560

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EXAMINER	
PADEN, CAROLYN A	
ART UNIT	PAPER NUMBER

1761

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

9-10

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/955,823	LANDON, TODD
	Examiner Carolyn A Paden	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 February 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 7-17,22-26,33-52 and 70 is/are allowed.
- 6) Claim(s) 1-6,18-20,27-32 and 53-55, 58,61-69 is/are rejected.
- 7) Claim(s) 21,56,57,59 and 60 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

All of the rejections under 35 USC 102(b) have been dropped for the reasons argued by applicant in the last office action. The rejection of the claims under 35 USC 112 has also been dropped.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 18-20, 27-32 and 53-55, 58, 61-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belleson (4,751,090).

Belleson discloses a composition for preparing glazed microwave popcorn. The glazing blend contains oil, sugar, water and lecithin. At column 5, lines 6-26, the composition is described as an oil-in-water emulsion. Salt is further included as a flavoring ingredient. The amount of unpopped corn to coating is shown at column 4, lines 45-55. Claims 1-6 appear to differ from Belleson in the recitation of the use of a water-in-oil-emulsion or an oil-in-water-in-oil-emulsion in the coating. To utilize a water-in-oil-emulsion coating rather than an oil-in-water-emulsion would have been an obvious way to modify the extent of fat in the popcorn coating and to reduce consumer exposure to cariogenic sugars. Thus it

would have been obvious to one of ordinary skill in the art to utilize a water-in-oil emulsion in the coating of Belleson to modify the flavor impact of the overall popcorn product. Applicant urges that claims 18-20 differ from Belleson in the suggestion that the flavor component in the product is added separately from the rest of the coating ingredients. This has been considered but is not persuasive. At column 5, lines 26-40, the idea of separately combining the oil and sugar phase rather than just mixing all of the ingredients together is shown. In Table 3, sugar, oil and water are described as components of the coating. At column 8, lines 41-47, the seasonings are combined with water prior to utilizing with the other ingredients. So a fair reading of these parts of the patent illustrates that the aspect of separate addition of flavors was contemplated in Belleson. Applicant has amended claim 4 and 30 to suggest that the coating is fat continuous and contains water. But it is the examiner's understanding that "fat continuous" is an equivalent term to "water-in-oil emulsion" and this aspect of the claims was addressed above.

Claim 53 appears to differ from Belleson in the suggestion of a "first potentially reactive additive" but applicant defines this additive at page 43 to include sugar. The claims also differ in the recitation of a particular

extent of stability of the product. Although the length of stability of the product is not especially mentioned in Belleson, the product intended for sale in the grocery store for use in the home by consumers. A substantial length of time is required in order for a product to move through all of the channels of commerce to reach the consumer. Thus one of ordinary skill in the art would anticipate that the product of Belleson would have the storage stability of the claims even though it is not specifically mentioned in the patent.

Claims 7-17, 22-26, 33-52 and 70 are allowed.

Claim 21, 56, 57, 59, 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Carolyn Paden*

CAROLYN PADEN 5-6-03  
PRIMARY EXAMINER  
GROUP 1300-1761